

JUDGE PRESK UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

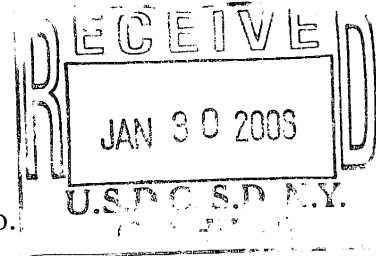
08 CV 00988

EAMES OFFICE, LLC and
MAHARAM FABRIC CORP.,
Plaintiffs

v.

BD HOTELS LLC d/b/a/ THE POD HOTEL,
SWAVELLE/MILL CREEK FABRICS, INC.
and VANESSA GUILFORD,
Defendants

Civ. No.



JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Eames Office, LLC ("Eames") and Maharam Fabric Corp. ("Maharam"), by and through their attorneys, Gravel and Shea, for their Complaint against Defendants BD Hotels LLC d/b/a The Pod Hotel ("Pod"), Swavelle/Mill Creek Fabrics, Inc. ("Swavelle") and Vanessa Guilford ("Guilford") allege as follows:

Nature of Action

1. This is an action for copyright infringement and unfair competition. After obtaining samples Eames's original and proprietary EAMES DOT PATTERN from Eames's exclusive licensee, Maharam, and apparently after deciding that the price of purchasing it lawfully was too high, Pod and Guilford bought a discount "knock off" of it from Swavelle, and used it as a central theme of The Pod Hotel's new interior design. Plaintiffs seek legal and

and equitable relief for this outrageous act of copyright infringement (under 17 U.S.C. § 501, *et seq.*) and unfair competition (under the Lanham Act, 15 U.S.C. §1125(a)).

Parties

2. Plaintiff Eames Office, LLC is a limited liability company organized and existing under the laws of the State of California, with a principal place of business in Santa Monica, California. It is engaged in the business of communicating, preserving, and extending the legacy and work of internationally famous designers Charles and Ray Eames, whose work is on display at, among other locations, the Museum of Modern Art in New York City. Eames sells and licenses the rights to a variety of original and proprietary designs and products, including furniture, prints, films, stationery, and home accessories, including fabric designs such as the EAMES DOT PATTERN.

3. Plaintiff Maharam Fabric Corporation is a corporation organized and existing under the laws of the State of New York, with a principal place of business in Hauppauge, New York. For more than one hundred years, Maharam has been engaged in the business of selling and distributing high-end textiles for seating, upholstery, wallcoverings, and other commercial applications. Maharam is the exclusive licensee of Eames's fabrics designs, including the EAMES DOT PATTERN, for use in the contract textile market for primary applications, including upholstery, wallcovering, panel, drapery, and cubicle curtain fabrics.

4. Defendant BD Hotels, LLC, d/b/a The Pod Hotel f/k/a Pickwick Arms ("Pod") is, upon information and belief, a New York entity with a principal place of business in New York,

New York, and which owns and operates a hotel located at 230 East 51st Street, New York, New York, 10022.

5. Defendant Swavelle/Mill Creek Fabrics, Inc. is, upon information and belief, a New York corporation with a principal place of business located in New York, New York.

6. Defendant Venessa Guilford is, upon information and belief, an interior designer who resides in New York, New York, and who worked as head designer and construction manager for Pod.

Jurisdiction and Venue

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a) and (b).

8. Venue lies in this district pursuant to 28 U.S.C. §§ 1391 (b) and 1400(a).

Facts

9. Eames is the owner of the original fabric design called EAMES DOT PATTERN, which was created in 1947 and first published in 1999, when it was licensed to Maharam for use as, *inter alia*, upholstery and wallcoverings.

10. The EAMES DOT PATTERN was registered with the United States Copyright Office as of February 26, 2007. (A copy of the copyright registration is annexed hereto as **Exhibit A.**)

11. On or about October 12, 2004, Pod and Guilford asked Maharam to send sample swatch fabrics for their consideration. (A copy of the Sample Order Inquiry is annexed hereto as **Exhibit B.**) At the time, Pod and Guilford were, upon information and belief, working on renovating and redesigning the hotel, which was formerly known as Pickwick Arms.

12. Pod and Guilford received the requested sample swatches from Maharam, including the EAMES DOT PATTERN, which contained a copyright notice indicating that the fabric design is owned by Eames. (A copy of the EAMES DOT PATTERN swatch is annexed hereto as **Exhibit C.**)

13. Six months later, on or about April 5, 2005, Pod and Guilford ordered another eight (8) yards of the EAMES DOT PATTERN in red. (A copy of the invoice is annexed hereto as **Exhibit D.**)

14. Despite reviewing and liking the EAMES DOT PATTERN, Pod and Guilford did not buy any more of the EAMES DOT PATTERN from Maharam.

15. Instead, Pod and Guilford purchased a “knock off” of the EAMES DOT PATTERN from Swavelle – for a substantially lower price per yard than that quoted by Maharam.

16. Swavelle manufactured or caused to be manufactured thousands of yards of a copy of the EAMES DOT PATTERN.

17. Swavelle sold to Pod thousands of yards of a copy of the EAMES DOT PATTERN.

18. In early 2007, Pod opened its doors to the public with a redesigned look using the EAMES DOT PATTERN as a central theme of the hotel. For example, Pod used the EAMES DOT PATTERN on its bedding, on its website, and on its brochures and promotional materials. **See Exhibit E.**

19. At approximately the same time, Pod issued a press release announcing its “original and surprisingly offbeat transformation” as crafted by Guilford, stating:

Guilford credits noted designers Charles and Ray Eames, the Los Angeles-based husband-and-wife design team who modernized post-war America during the 20th century, with shaping her view of what The POD HOTEL should be. To that end, she used an interpretation of their signature dot fabric, circa 1947, on guest room bedding and headboard upholstery and chose a reproduction of their 1951 metal mesh chair for guest room desk chairs, among myriad other details.

COUNT I
(Copyright Infringement Against All Defendants)

20. Plaintiffs repeat and reallege each of the foregoing allegations as though fully set forth herein.

21. None of the foregoing uses of the EAMES DOT PATTERN Defendants were authorized by Eames or Maharam.

22. Defendants knew that the EAMES DOT PATTERN was an original and proprietary design.

23. Defendants knew that the EAMES DOT PATTERN was subject to copyright protection.

24. By virtue of the foregoing, Defendants have infringed and contributorily infringed Eames's copyright, in violation of Eames's rights as copyright owner and Maharam's rights as exclusive licensee.

25. By virtue of the foregoing, Defendants have wantonly and willfully infringed Eames's copyright, in violation of Eames's rights as copyright owner and Maharam's rights as exclusive licensee.

26. By virtue of the foregoing, Defendants have damaged Plaintiffs, and are liable in an amount to be determined at trial.

COUNT II
(Unfair Competition Against Pod and Guilford)

27. Plaintiffs repeat and reallege each of the foregoing allegations as though fully set forth herein.

28. Pod and Guilford have used the EAMES DOT PATTERN and the Eames name in ways that are likely to cause confusion, mistake, and deceive as to the affiliation, connection, association, origin, sponsorship and approval of Plaintiffs. For example, Pod and Guilford have issued a press release and produced other marketing, branding and advertising materials invoking Charles and Ray Eames, their high regard as designers, and the EAMES DOT PATTERN.

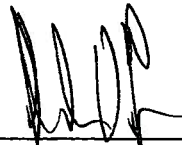
29. By virtue of the foregoing, Pod and Guilford are liable for unfair competition under the Lanham Act, 15 U.S.C. § 1125(a), in an amount to be determined at trial.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendants as follows:

- (a) awarding Plaintiffs for each and every act of infringement, pursuant to 17 U.S.C. § 504(a), *et seq.*, the greater of:
 - (i) actual damages and profits in an amount to be determined at trial, pursuant to 17 U.S.C. § 504(b);
 - (ii) statutory damages in the amount of \$30,000 for infringement, pursuant to 17 U.S.C. § 504(c)(1); or
 - (iii) statutory damages in the amount of \$150,000 for willful infringement, pursuant to 17 U.S.C. § 504(c)(2);
- (b) awarding Plaintiffs their full costs and reasonable attorneys' fees incurred in this action pursuant to 17 U.S.C. § 505;
- (c) enjoining Defendants from further copyright infringement and impounding all infringing items;

- (d) awarding Plaintiffs injunctive relief pursuant to 15 U.S.C. § 1116;
- (e) awarding Plaintiffs (i) treble damages; (ii) defendants' profits; and (iii) all costs of the action, including attorneys' fees, pursuant to 15 U.S.C. § 1117(a);
- (f) awarding Plaintiffs all other available compensatory and punitive damages; and
- (g) such other and further legal and equitable relief as the Court deems just and proper.

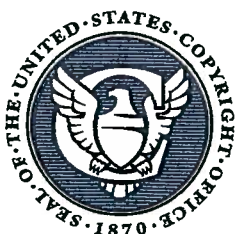
Dated: Burlington, Vermont
January 29, 2008



Andrew D. Manitsky, Esq.
Megan J. Shafritz, Esq.
Gravel and Shea
76 St. Paul Street, 7th Floor
P. O. Box 369
Burlington, VT 05402-0369
(802) 658-0220

Attorneys For Plaintiffs

Exhibit A



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form VA
 For a Work of the Visual Arts

VA 1-398-152



EFFECTIVE DATE OF REGISTRATION

Feb. 26 2007
 Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

Title of This Work ▼

Eames Dot Pattern

NATURE OF THIS WORK ▼ See instructions

Fabric Design

Previous or Alternative Titles ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

NAME OF AUTHOR ▼

Ray Eames

DATES OF BIRTH AND DEATH

Year Born ▼

1912

Year Died ▼

1988

Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No

Author's Nationality or Domicile Name of Country

OR { Citizen of United States
 Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☒ 2-Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

Name of Author ▼

Dates of Birth and Death

Year Born ▼

Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

Author's Nationality or Domicile Name of Country

OR { Citizen of
 Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☐ No

Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2-Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

Year in Which Creation of This Work Was Completed

1947

This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published.

Month July

Day 1

Year 1999

United States

Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Eames Office, LLC, 850 Pico Boulevard, Santa Monica, CA 90405

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

Eames Office, LLC was assigned the rights to the copyright from Lucia Eames, the sole heir of Estate of Ray Eames

APPLICATION RECEIVED

FEB 26 2007

ONE DEPOSIT RECEIVED

FEB 26 2007

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ▶

• Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
 • See detailed instructions.
 • Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 2 pages

2

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

3

4

See instructions before completing this space.

EXAMINED BY grh

FORM VA

CHECKED BY grh☒ CORRESPONDENCE
YesFOR
COPYRIGHT
OFFICE
USE
ONLY**DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.****PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▽a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▽

Year of Registration ▽

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▽

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▽

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▽

Account Number ▽

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▽

William A. Mason, IV, Esq., 76 St. Paul Street, 7th Floor, P.O. Box 369, Burlington, VT 05402-0369

Area code and daytime telephone number (802) 658-0220

Fax number (802) 658-1456

Email cmason@gravelshea.com

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one ▶

- ☐ author
- ☐ other copyright claimant
- ☐ owner of exclusive right(s)
- ☒ authorized agent of

James Office, LLC

Name of author or other copyright claimant, or owner of exclusive right(s) A

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▽ If this application gives a date of publication in space 3, do not sign and submit it before that date.

William A. Mason

Date

04/07/07

Handwritten signature (s) ▽

X

Certificate
will be
mailed in
window
envelope
to this
address:

Name ▽

William A. Mason, IV, Esq.

Number/Street/Apt ▽

76 St. Paul Street, 7th Floor, P.O. Box 369

City/State/ZIP ▽

Burlington, VT 05402-0369

- Complete all necessary spaces
- Sign your application in space 8

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

*17 USC (506)(c). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

Exhibit B

MAHARAJA TERMINAL-T999 y HWENNER y PGM-SORDER3
 SAMPLE ORDER INQUIRY Friday, November 2, 2007

TYPE OPERATOR: DE JESS: CA GLA ORDER NO: 696600 INVOICE NO: 706841
 SPECIFIER 28900 INV DT: 10/12/04
 MINDY COLEMAN SHIP-TO JOSEPHINE VISALLI
 251 PARK AVENUE SOUTH VANESSA GUILFORD INTERIOR DESIGN
 15TH FLOOR PICKWICK
 230 EAST 51ST STREET
 NEW YORK NEW YORK
 NY 10010 NY 10022 US UNITED STATES
 SALESPERSON 289 MINDY COLEMAN M/F REMARK
 SHIP VIA 002 UPS NEXT DAY M/F REMARK
 ATTENTION MS. VANESSA GUILFORD INT REMARK
 REQUESTED BY MS. VANESSA GUILFORD INT REMARK
 PHONE NUMBER 718.225.6101 STATUS I USE RESERVE
 FOB CODE 01 HAUPPAUGE TRACER 1Z823W670160568755
 SOURCE WALK IN FREIGHT 17.25
 JOB/LOCATION PICKWICK

MAHARAJA TERMINAL-T999 y HWENNER y PGM-SORDER3
 SAMPLE ORDER DETAIL Friday, November 2, 2007

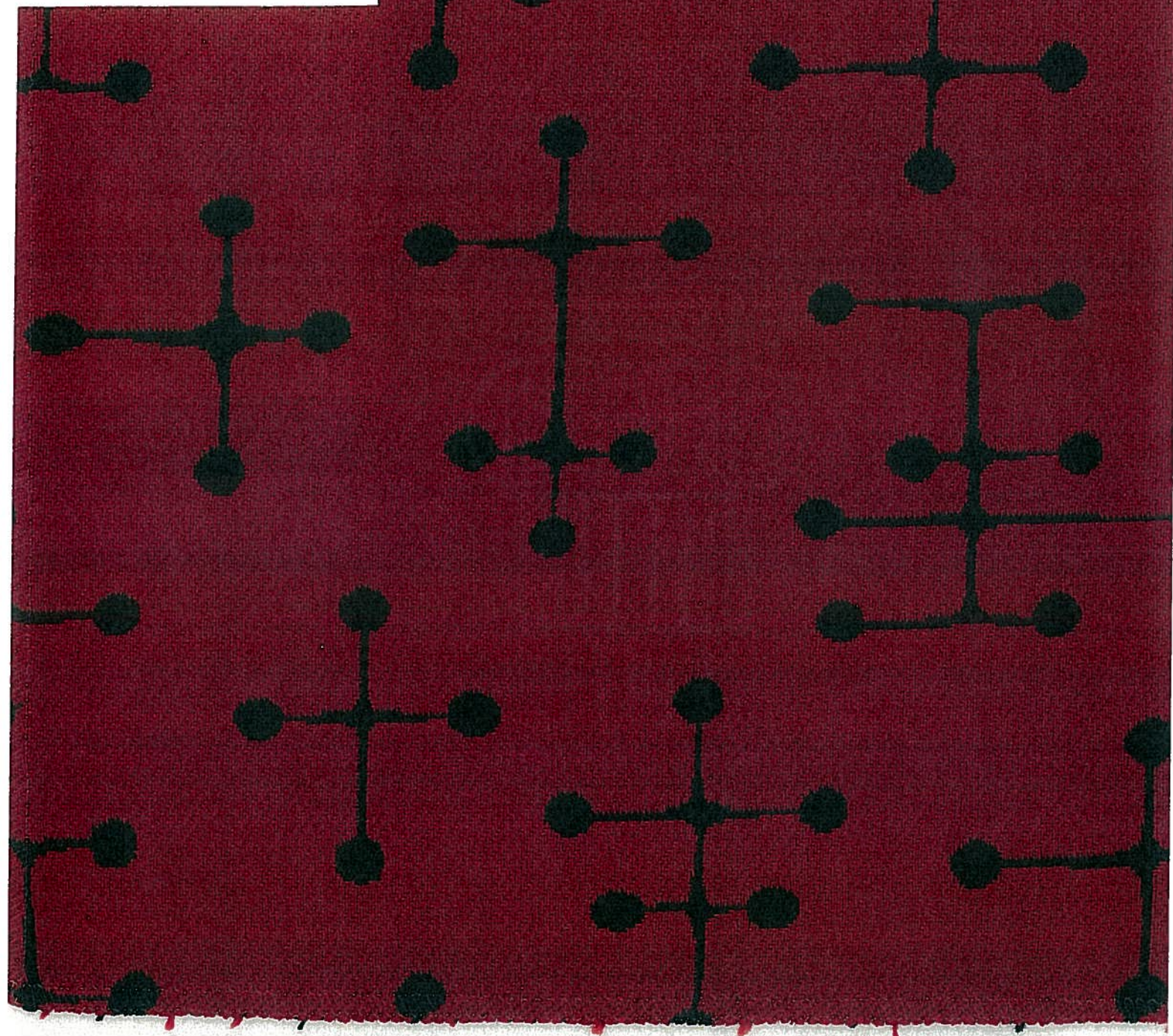
SPECIFIER: 28900 MINDY COLEMAN ORDER: 696600 INVOICE: 706841

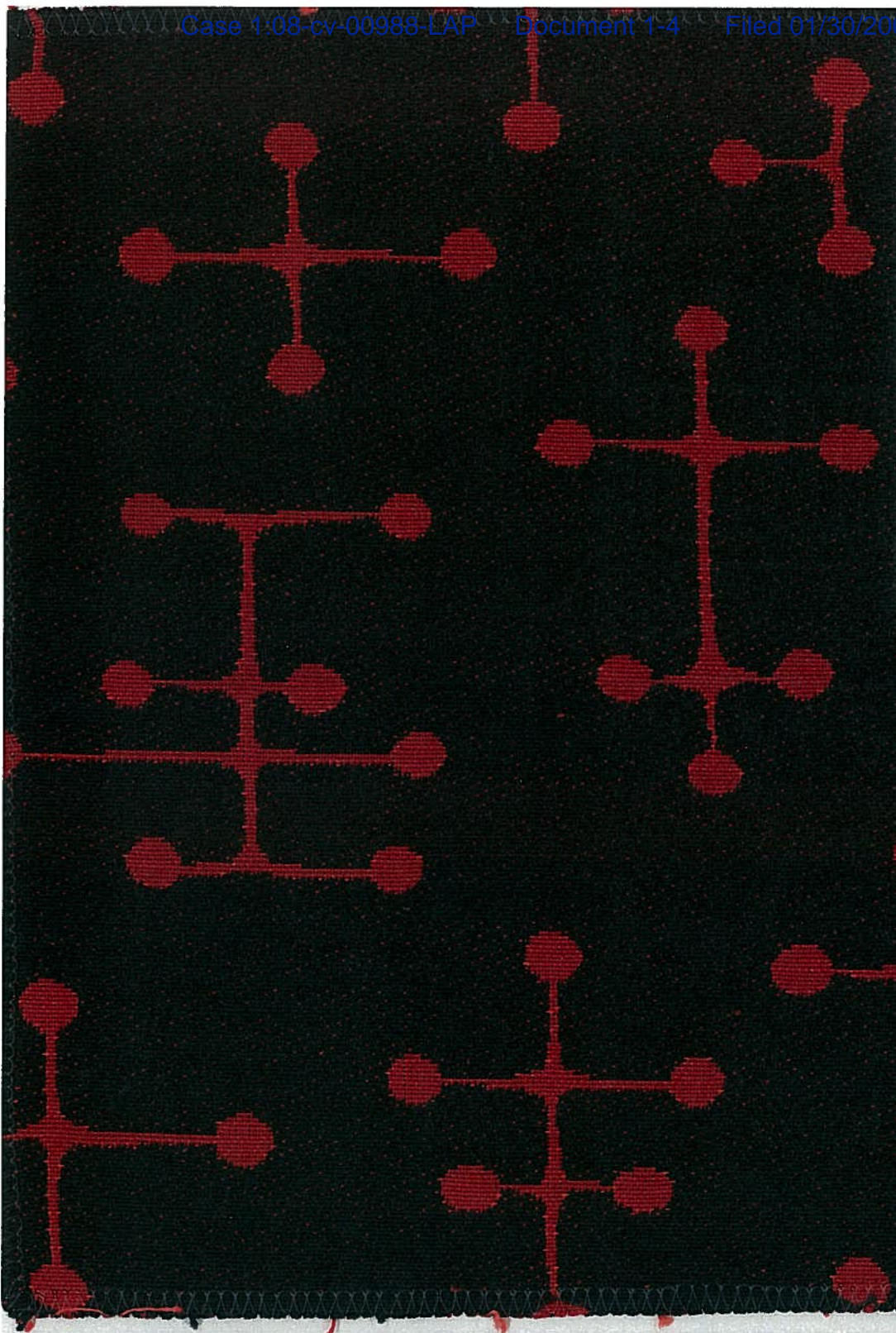
SAMPLE ITEM	ORD	SHIP	B/O
M/458300/003 DOT PATTERN BROW	1	1	0
M/458300/005 DOT PATTERN NAVY	1	1	0
M/458320/005 SMALL DOT PATTERN CHARCOAL	1	1	0
M/458320/007 SMALL DOT PATTERN RED	1	1	0
M/459740/003 PAVEMENT GREY	1	1	0
M/459740/008 PAVEMENT COPPER	1	1	0
M/459740/007 PAVEMENT LODEN	1	1	0
M/459960/002 OPTIK FUCHSIA/RE	1	1	0
M/462870/004 BLUMEN LAKE	1	1	0
M/462870/005 BLUMEN ESPRESSO	1	1	0
M/462870/006 BLUMEN LODEN	1	1	0
M/463540/001 BESPOKE STRIPE N VY(RBN)	1	1	0
M/463540/002 BESPOKE STRIPE T BACCO(RBN)	1	1	0

A/?/ <F10>=EXIT

Exhibit C

ma|ha|ra|m|





Pattern	Small Dot Pattern 458320 by Charles and Ray Eames, 1947 <i>Textiles of the 20th Century</i>
Color	007 Red
Application	Seating
Content	71% Cotton, 29% Polyester
Finish	Teflon®
Width	55"
Repeat	7 5/8" V, 12 7/8" H
Durability	40,000+ double rubs
Fabric design © 2000 Eames Office. A Charles and Ray Eames Design™ fabric. All rights reserved.	



Photo on reverse

|mah|a|r|a|m| 800.645.3943 maharam.com



458320007

Exhibit D



45 Rasons Court
Hauppauge, NY 11788

800.645.3943
631.582.1026 fax

Account Number

0632142

Invoice Date

04/05/05

Invoice Number

893716

Invoice

Bill To	PICKWICK HOTEL 230 EAST 51ST STREET NEW YORK NY 10022
---------	---

Ship To	PICKWICK HOTEL 230 EAST 51ST STREET CONSTRUCTION SUITE 204 NEW YORK NY 10022
---------	---

Customer Order Number	Order Number	Terms	Ship Via
PWSAMPLE22	806837	CR CARD	UPS GROUND

Quantity Billed	U/M	Item Number		Unit Price	Total
2.00	YD	462560-006	LETTERS AQUA	76.00	152.00
8.00	YD	458320-007	SMALL DOT PATTERN RED	65.00	520.00
JOB NAME: PICKWICK HOTEL					

Please Remit to: Maharam, P.O Box 5937 Hauppauge, NY 11788

For speed of processing your payment, please indicate the Invoice Number on your remittance advice/check.

- If prices or terms are not correctly stated on invoice, return to us at once for correction
- All claims must be made within 30 days after invoice date.
- No allowance made after goods are cut.
- Continuing guaranty under the textiles fiber products identification act filed with the federal trade commission.
- No returns allowed without prior authorization

Shipping and Handling

\$16.68

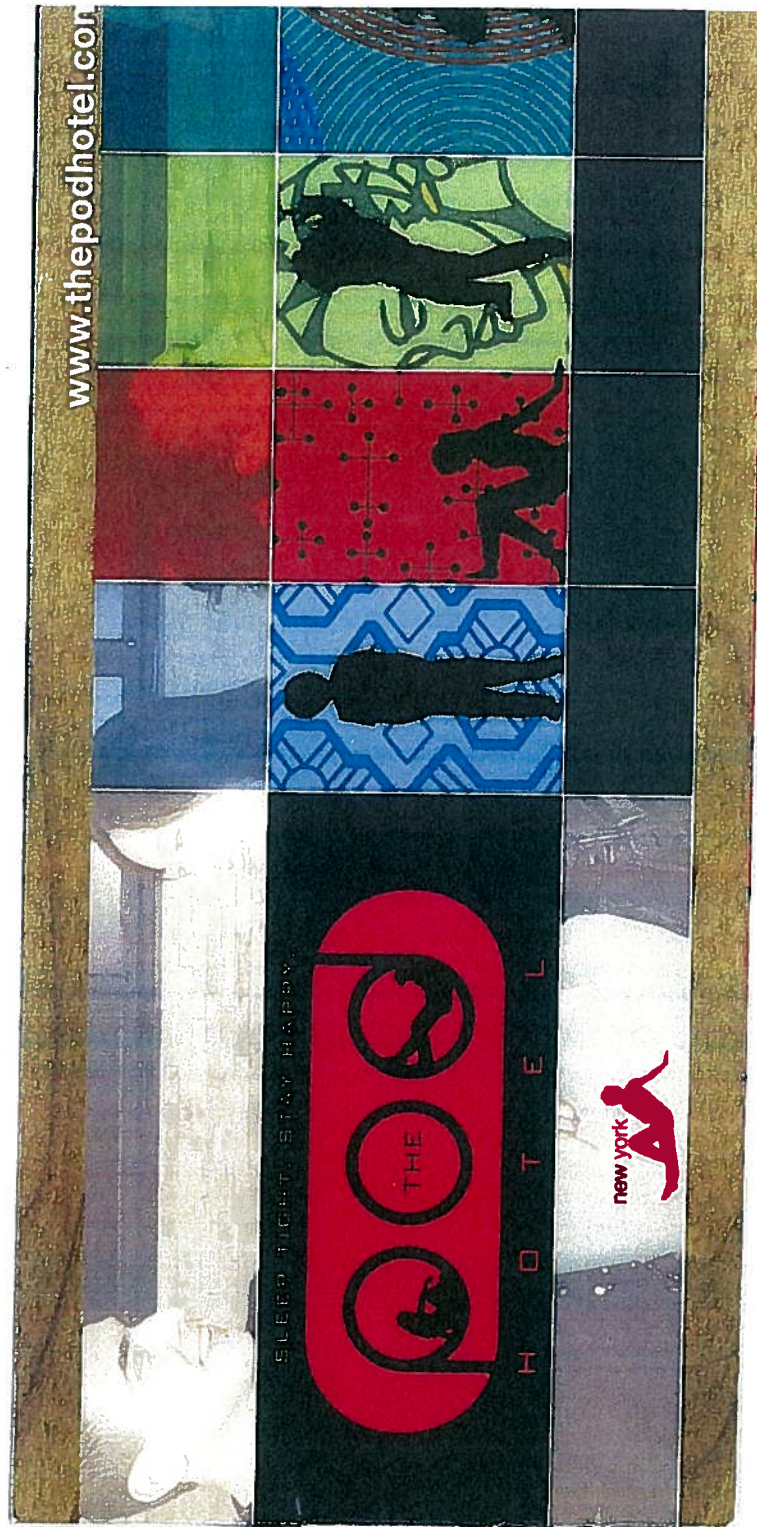
Sales Tax

\$59.40

Total Due

\$748.08

Exhibit E



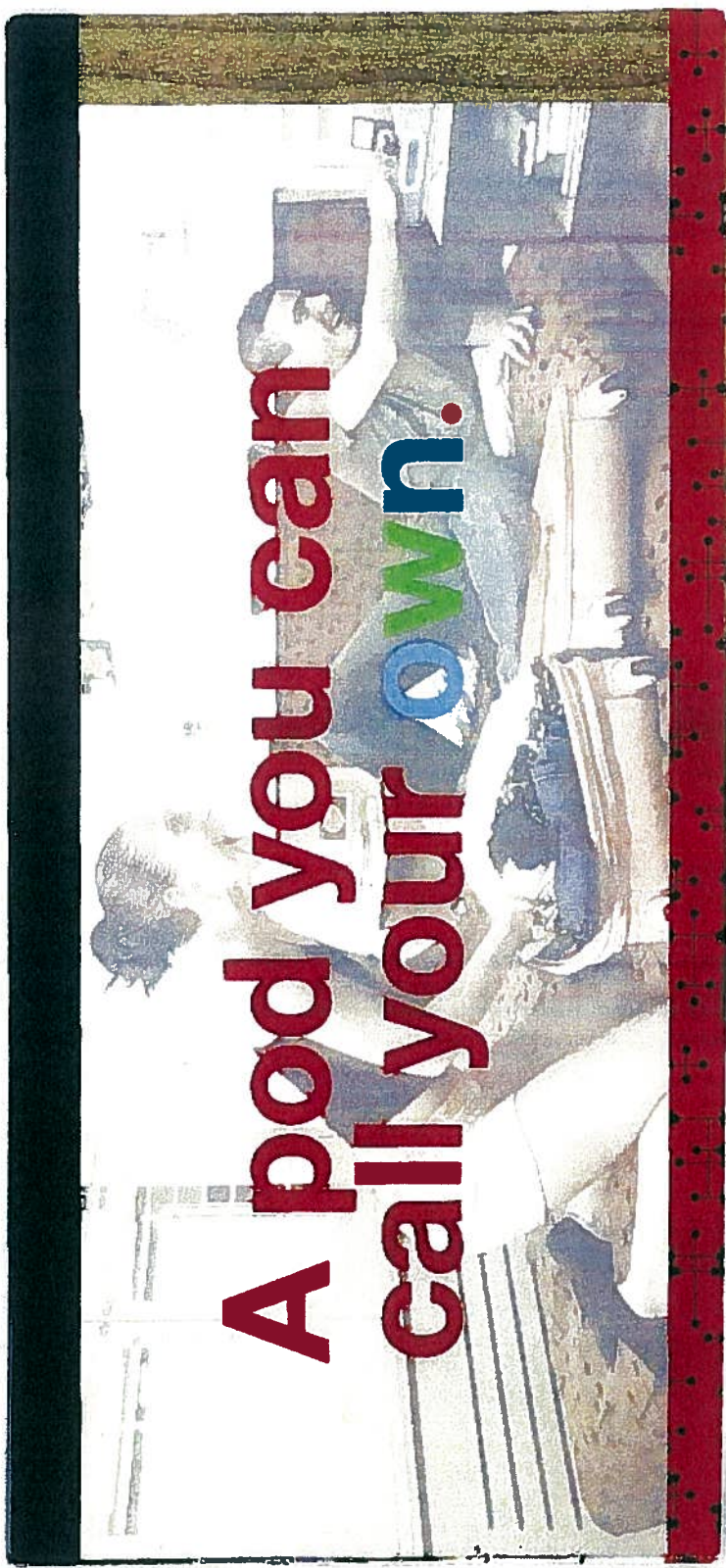
SLEEP TIGHT.

Your Pod

There's a Pod for every person, and an endless range of possibilities. You can set your music and your mood with our iPod docking stations, plug into the Internet with free WiFi access, and catch your favorite shows on LCD TVs. Each Pod is fully air-conditioned and equipped with efficient, stylish furniture that's designed to maximize your comfort and your living space.

It's your Pod. Make the most of it.

To make a reservation visit www.thepodhotel.com





www.thepodhotel.com

Double

- Double-bed sleeps 2
- Comfortable workspace
- 15" LCD TV, iPod docking station

Bunk

- Open closet + built-in storage
- Luxurious private bath
- Free WiFi
- Two bunked twin beds
- Comfortable workspace
- Two 102" LCD TVs, iPod docking station
- Open closet
- Stainless steel sink
- Free WiFi

STAY HAPPY.

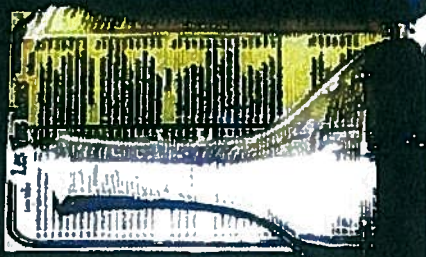
Beyond Your Pod

Step out of your Pod and discover PodCulture. Kick back and relax in our modish lobby, grab a bite to eat at our restaurant, or soak up the city from above on our beautiful rooftop garden. Plug into the Pod community before you even arrive on our customized PodBlog. Swap stories, trade itineraries and ideas, and get to you know your fellow Pod mates.

Because great minds travel alike.

To make a reservation visit www.thepodhotel.com

Restaurant



Le Bateau-Livre

Visit Le Bateau-Livre, an authentic French bistro that's located on the ground floor of the hotel.

Lounge



Lounge

Opens summer 2007. Our Rooftop offers a modern setting with a backdrop by Jim Rizzi.

Rooftop



Rooftop

Hang out on our comfy cushions and watch the sunset from our rooftop deck.



SLEEP TIGHT. STAY HAPPY.



H O T E L

230 East 51st Street
Between 2nd & 3rd Ave
NYC, NY 10022

P 212.655.6508
F 212.755.5029
Toll Free U.S. 800.792.3543

www.thepodhotel.com